

21 C.J.S. Courts § 311

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Courts

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IX. Court Commissioners

A. Nature of Office, Appointment, Qualification, and Tenure

§ 311. Appointment and creation of office of court commissioner

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Court Commissioners](#) 1

Courts have the inherent power to appoint court commissioners to aid judges in the performance of judicial duties.

State constitutional provisions sometimes grant the judges of specified courts the power to appoint court commissioners¹ or may expressly authorize the legislature to provide for the appointment of court commissioners.² Courts also have the inherent power to appoint court commissioners³ to aid judges in the performance of judicial duties, at least in the absence of legislation to the contrary.⁴ A constitutional provision authorizing the legislature to provide for the appointment of commissioners is not intended to circumscribe the inherent power of courts to appoint subordinate judicial officers but, rather, is intended to confirm the legislature's authority to provide for such appointments.⁵

Court commissioners are appointed and not subject to election.⁶ Since court commissioners wield substantial authority without direct accountability to a county's residents, there must be strict

compliance with statutory requirements governing the creation and authorization of the office.⁷ The office must be properly and publicly created and authorized, and may not be established by a county board simply by adopting an oral plan known only to those present at a public hearing, or simply by appropriating funds to pay commissioners and manifesting a general intent to create the office.⁸

Under trial rules authorizing a court to appoint a court commissioner to effectuate its orders or judgments, the court is not required to comply with the requirements for the appointment of a master who is empowered to act as a surrogate for the court in specified proceedings.⁹

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Footnotes

- 1 Ariz.—[State v. Tackman](#), 183 Ariz. 236, 902 P.2d 1340 (Ct. App. Div. 1 1994).
Wash.—[State v. Goss](#), 78 Wash. App. 58, 895 P.2d 861 (Div. 2 1995).
- 2 Cal.—[Settemire v. Superior Court](#), 105 Cal. App. 4th 666, 129 Cal. Rptr. 2d 560 (2d Dist. 2003).
- 3 Ariz.—[State v. Tackman](#), 183 Ariz. 236, 902 P.2d 1340 (Ct. App. Div. 1 1994).
Cal.—[Settemire v. Superior Court](#), 105 Cal. App. 4th 666, 129 Cal. Rptr. 2d 560 (2d Dist. 2003).
W. Va.—[Aluise v. Nationwide Mut. Fire Ins. Co.](#), 218 W. Va. 498, 625 S.E.2d 260 (2005).
- 4 W. Va.—[Aluise v. Nationwide Mut. Fire Ins. Co.](#), 218 W. Va. 498, 625 S.E.2d 260 (2005).
- 5 Cal.—[Settemire v. Superior Court](#), 105 Cal. App. 4th 666, 129 Cal. Rptr. 2d 560 (2d Dist. 2003).
- 6 Wash.—[State v. Moore](#), 73 Wash. App. 805, 871 P.2d 1086 (Div. 2 1994).
- 7 Wash.—[State v. Amodio](#), 110 Wash. App. 359, 40 P.3d 1182 (Div. 3 2002).
- 8 Wash.—[State v. Moore](#), 73 Wash. App. 805, 871 P.2d 1086 (Div. 2 1994).
- 9 Ind.—[Hansford v. Maplewood Station Business Park](#), 621 N.E.2d 347 (Ind. Ct. App. 1993).